

APPEAL NO. 031337
FILED JULY 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 5, 2003. The hearing officer decided that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appeals, pointing to inconsistencies between the hearing officer's discussion of the evidence and her findings of fact, arguing that the evidence was contrary to her decision, and asserting that he had detrimentally relied upon an earlier decision which granted him SIBs under the same evidence. The respondent (carrier herein) replies that in determining entitlement to SIBs each quarter stands on its own, and for the present quarter, the hearing officer's decision was supported by the fact that there were medical records in evidence showing that the claimant could work during the qualifying period for the fifth quarter.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the relevant qualifying period was from October 28, 2002, through January 26, 2003. The hearing officer found that during the qualifying period the claimant met the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1), but did not meet the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

The claimant appeals, contending that he met the good faith requirement because he had a total inability to work during the qualifying period. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with his or her ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The claimant points to contradictory language between the hearing officer's factual finding concerning whether he provided a narrative report specifically explaining how his injury caused a total inability to work. In Finding of Fact No. 2 the hearing officer states as follows:

2. The Claimant failed to establish by specific, detailed or explanative medical evidence that he was unable to perform any work at all during part of the qualifying period for the 5th quarter.

However, the hearing officer stated as follows in her discussion of the evidence in the case:

In the present case, the evidence contained a report from [Dr. Z], the Claimant's treating doctor, in which he indicated the Claimant could not work due to severe pain, extreme limitations of movement, depression and the possibility of further injury. This Hearing Officer finds the report provides a narrative report explaining how the injury causes a total inability to work.

While this difference between the hearing officer's factual finding and her discussion is certainly confusing, the hearing officer does go on in her discussion of the evidence to clearly explain why she believed other records showed that the claimant had an ability to work during the qualifying period, stating as follows:

However, the second prong to establishing no ability is that no other records can show the Claimant had an ability to work. In the present case, the record contained a functional capacity evaluation dated July 17, 2002 and a report from [Dr. H], who performed an independent medical exam on behalf of the Carrier, and both indicated the Claimant could perform work in a sedentary capacity. The reports of [Dr. Z] and [Dr. H] were prepared after the expiration of the qualifying period, however, the Appeals Panel has held a Hearing Officer can refer to evidence that falls outside of the qualifying period. Thus the Claimant failed to establish pursuant to Rule 130.102(d) that he had no ability to work.

This language makes it clear that the hearing officer believed that the claimant failed to meet the requirement that no other records showed that he had an inability to work during the qualifying period. This was a factual determination that was supported by the evidence referenced by the hearing officer. Thus, we find no basis to set aside the hearing officer's decision that the claimant was not entitled to SIBs for the fifth quarter.

The claimant argues that in not seeking employment during the qualifying period for the fifth quarter he detrimentally relied upon the decision of the hearing officer that he had been entitled to SIBs for the fourth quarter based upon an inability to work.¹ Each quarter of SIBs entitlement stands alone and the decision of eligibility for one quarter is not binding on determining eligibility for subsequent quarters. Texas Workers' Compensation Commission Appeal No. 000512, decided April 24, 2000. We note that additional evidence was offered at this hearing which includes Dr. H's report dated April 7, 2003, which was subsequent to the hearing for entitlement to fourth quarter SIBs.

¹ The hearing officer's decision concerning entitlement to SIBs for the fourth quarter was affirmed in Texas Workers' Compensation Commission Appeal No. 030523, decided April 15, 2003.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ABERDEEN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CHARLIE MILLER
10370 RICHMOND AVENUE
HOUSTON, TEXAS 77042.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Margaret L. Turner
Appeals Judge